

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BORIS FREIRE and MIRIAM OSORIO,

Case No.: 13-cv-07291-NGG-RML

Plaintiffs,

- against -

NEW YORK MOTOR GROUP, LLC, *et al.*

Defendants.

**SANTANDER CONSUMER USA,
INC.'S ANSWER AND DEFENSES
TO PLAINTIFFS' COMPLAINT AND
CROSS CLAIM AGAINST PLANET
MOTOR CARS, INC.**

Defendant Santander Consumer USA, Inc. ("Santander"), in answer to the Complaint filed by plaintiffs Boris Freire and Miriam Osorio ("Plaintiffs"), states as follows:

PRELIMINARY STATEMENT

By way of general response, all allegations are denied unless specifically admitted, and any factual averment admitted is admitted only as to the specific facts and not as to any conclusions, characterization, implications or speculations that are contained in the averment or in the Complaint as a whole. This preliminary statement is incorporated, to the extent appropriate, into each numbered paragraph of the Answer.

SPECIFIC RESPONSES

1. No response is required to Paragraph 1 because it states conclusions of law and purports to summarize the action generally. To the extent that a response is required, Santander denies the allegations in Paragraph 1.

2. No response is required to Paragraph 2 because it states conclusions of law and purports to summarize the action generally. To the extent that a response is required, Santander denies the allegations in Paragraph 2.

3. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 3.

4. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 4.

5. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 5.

6. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 6.

7. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 7.

8. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 8.

9. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 9.

10. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 10.

11. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 11.

12. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 12.

JURISDICTION AND VENUE

13. Paragraph 13 contains a legal conclusion to which no response is required. To the extent a response is required Santander admits that the United States District Court for the Eastern District of New York has jurisdiction over this matter.

14. Paragraph 14 contains a legal conclusion to which no response is required.

15. Paragraph 15 contains a legal conclusion to which no response is required.

16. Paragraph 16 contains a legal conclusion to which no response is required.

Santander denies that it maintains offices in this District. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 16.

THE PARTIES

17. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 17.

18. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 18.

19. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 19.

20. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 20.

21. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 21.

22. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 22.

23. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 23.

24. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 24.

25. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 25.

26. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 26.

27. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 27.

28. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 28.

29. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 29.

30. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 30.

31. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 31.

32. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 32.

33. Santander admits the allegations in Paragraph 33.

34. Paragraph 34 contains legal conclusions to which no response is required. To the extent a response is required Santander admits that it is the assignee of a Retail Instalment

Contract dated February 19, 2013 between plaintiff Boris Freire and defendant Planet Motor Cars Inc. Santander denies the remaining allegations in Paragraph 34.

FACTS

35. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 35.

36. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 36.

37. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 37.

38. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 38.

39. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 39.

40. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 40.

41. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 41.

42. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 42.

43. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 43.

44. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 44.

45. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 45.

46. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 46.

47. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 47.

48. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 48.

49. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 49.

50. Santander is unable to admit or deny the allegations in Paragraph 50 because portions of “Exhibit A” to the Complaint are illegible. Santander further states that the Retail Instalment Contract dated February 19, 2013 between plaintiff Boris Freire (“Friere”) and defendant Planet Motor Cars Inc. (“Planet Motor Cars”) speaks for itself, and refers the Court to the Retail Instalment Contract dated February 19, 2013 between Freire and Planet Motor Cars for a complete and accurate statement of its terms.

51. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 51.

52. Santander denies that it required Freire to purchase a “package” of other products, which included Insurance and a Service Contract. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 52.

53. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 53.

54. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 54.

55. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 55.

56. Santander denies that it required the purchase of insurance be included in the financing agreement. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 56.

57. Santander denies that it required Planet Motor Cars to increase the price of the vehicle by \$3000. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 57.

58. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 58.

59. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 59.

60. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 60.

61. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 61.

62. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 62. Santander further states that the so-called Theft Deterrent Certificate attached as “Exhibit B” to the Complaint speaks for itself, and refers the Court to that document for a complete and accurate statement of its terms.

63. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 63.

64. Santander admits that it received information concerning Freire's application for credit from Planet Motor Cars on or about February 19, 2013. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 64.

65. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 65.

66. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 66.

67. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 67.

68. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 68.

69. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 69.

70. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 70.

71. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 71.

72. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 72.

73. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 73.

74. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 74.

75. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 75.

76. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 76.

77. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 77.

78. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 78.

79. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 79.

80. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 80.

81. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 81.

82. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 82.

83. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 83.

84. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 84.

85. Santander admits that a document purporting to be a second retail instalment contract between Planet Motor Cars and Plaintiffs is attached to the Complaint as “Exhibit C”. Santander further states that the purported second retail instalment contract attached as “Exhibit C” to the Complaint speaks for itself, and refers the Court to that document for a complete and accurate statement of its terms. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 85.

86. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 86.

87. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 87.

88. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 88.

89. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 89.

90. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 90.

91. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 91.

92. Santander admits that the amount of Freire’s regular monthly installment payments is \$624.12. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 92.

93. Santander admits that the amount of Freire’s regular monthly installment payments is \$624.12, and further admits that it sent monthly statements to Mr. Freire which

indicated the amount then due on his account. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 93.

94. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 94.

95. Santander denies that it called Freire daily to demand payment on his account. Santander further states that Freire's account was 40 days past due as of October 4, 2013. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 95.

96. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 96.

97. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 97.

98. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 98.

99. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 99.

100. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 100.

101. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 101.

102. Santander admits that it has not received any payments from Planet Motor Cars on behalf of Freire.

103. Santander admits that Freire's account was current as of December 23, 2013. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 103.

104. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 104.

105. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 105.

106. Santander admits that it has received some installment payments from Freire. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 106.

107. Santander denies the allegations in Paragraph 107 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 107.

108. Santander denies the allegations in Paragraph 108 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 108.

COUNT I
TRUTH IN LENDING ACT, 15 §§1601 et seq. ("TILA")

109. Santander repeats and re-alleges its responses in the foregoing paragraphs.

110. Paragraph 110 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 110.

111. Paragraph 111 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 111.

112. Paragraph 112 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 112.

113. Paragraph 113 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 113.

114. Paragraph 114 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 114.

115. Paragraph 115 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 115.

116. Santander denies the allegations in Paragraph 116 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 116.

117. Santander denies the allegations in Paragraph 117 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 117.

118. Santander denies the allegations in Paragraph 118 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 118.

119. Paragraph 119 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 119.

COUNT II
TRUTH IN LENDING ACT, 15 §§1601 et seq. ("TILA")
(Against Dealerships, Mamdoh Eltouby, Nada Eltouby, and Julio Estrada only)

120. Santander repeats and re-alleges its responses in the foregoing paragraphs.

121. The allegations in Paragraph 121 are not directed to Santander and, accordingly, Santander is not required to respond.

122. The allegations in Paragraph 122 are not directed to Santander and, accordingly, Santander is not required to respond.

123. The allegations in Paragraph 123 are not directed to Santander and, accordingly, Santander is not required to respond.

124. The allegations in Paragraph 124 are not directed to Santander and, accordingly, Santander is not required to respond.

125. The allegations in Paragraph 125 are not directed to Santander and, accordingly, Santander is not required to respond.

126. The allegations in Paragraph 126 are not directed to Santander and, accordingly, Santander is not required to respond.

127. The allegations in Paragraph 127 are not directed to Santander and, accordingly, Santander is not required to respond.

128. The allegations in Paragraph 128 are not directed to Santander and, accordingly, Santander is not required to respond.

129. The allegations in Paragraph 129 are not directed to Santander and, accordingly, Santander is not required to respond.

COUNT III
CIVIL VIOLATIONS OF RICO, 28 U.S.C. § 1692(c) & (d)

130. Santander repeats and re-alleges its responses in the foregoing paragraphs.

131. Paragraph 131 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 131.

132. Paragraph 132 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 132.

133. The allegations in Paragraph 133 are not directed to Santander and, accordingly, Santander is not required to respond.

134. Santander denies that it is employed by or associated with the “Dealerships.” The remaining allegations in Paragraph 134 are not directed to Santander and, accordingly, Santander is not required to respond.

135. Santander denies the allegations in Paragraph 135 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 135.

136. The allegations in Paragraph 136 are not directed to Santander and, accordingly, Santander is not required to respond.

137. The allegations in Paragraph 137 are not directed to Santander and, accordingly, Santander is not required to respond.

138. The allegations in Paragraph 138 are not directed to Santander and, accordingly, Santander is not required to respond.

139. Santander denies the allegations in Paragraph 139 (including subparagraphs (a) through (f)) to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 139.

140. Santander denies the allegations in Paragraph 140 (including subparagraphs (a) through (d)) to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 140.

141. Santander denies the allegations in Paragraph 141 (including subparagraphs (a) through (d)) to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 141.

142. Santander denies the allegations in Paragraph 142 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 142.

143. Santander denies the allegations in Paragraph 143 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 143.

144. Santander denies the allegations in Paragraph 144 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 144.

145. Paragraph 145 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 145.

146. The allegations in Paragraph 146 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 146.

147. The allegations in Paragraph 147 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 147.

148. The allegations in Paragraph 148 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 148.

149. The allegations in Paragraph 149 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 149.

150. The allegations in Paragraph 150 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 150.

151. Santander denies the allegations in Paragraph 151 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 151.

152. Santander denies the allegations in Paragraph 152 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 152.

**COUNT IV
VIOLATIONS OF NEW YORK MOTOR VEHICLE
RETAIL INSTALLMENT SALES ACT § 302, et seq. (MVRISA)**

153. Santander repeats and re-alleges its responses in the foregoing paragraphs.

154. Paragraph 154 contains a legal conclusion to which no response is required.

155. Paragraph 155 contains a legal conclusion to which no response is required.

156. Paragraph 156 contains a legal conclusion to which no response is required.

157. Paragraph 157 contains a legal conclusion to which no response is required.

158. Paragraph 158 contains a legal conclusion to which no response is required.

159. Santander denies the allegations in the first sentence of Paragraph 159. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 159.

160. The allegations in Paragraph 160 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 160.

161. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 161.

162. The allegations in Paragraph 162 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 162.

163. Paragraph 163 contains a legal conclusion to which no response is required.

164. Paragraph 164 contains a legal conclusion to which no response is required.

165. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 165.

166. Paragraph 166 contains a legal conclusion to which no response is required.

167. Paragraph 167 contains a legal conclusion to which no response is required.

168. Paragraph 168 contains a legal conclusion to which no response is required.

169. Santander denies the allegations in Paragraph 169 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 169.

COUNT V
VIOLATION OF NEW YORK CIVIL USURY LAWS

170. Santander repeats and re-alleges its responses in the foregoing paragraphs.

171. Paragraph 171 contains a legal conclusion to which no response is required.

172. Paragraph 172 contains a legal conclusion to which no response is required.

173. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 173.

174. Paragraph 174 contains a legal conclusion to which no response is required.

175. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 175.

176. Paragraph 176 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 176.

177. Santander denies the allegations in Paragraph 177 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 177.

COUNT VI FRAUD

178. Santander repeats and re-alleges its responses in the foregoing paragraphs.

179. Santander denies the allegations in Paragraph 179 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 179.

180. Santander denies the allegations in Paragraph 180 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 180.

181. Santander denies the allegations in Paragraph 181 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 181.

182. Santander denies the allegations in Paragraph 182 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 182.

183. Santander denies the allegations in Paragraph 183 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 183.

184. Santander denies the allegations in Paragraph 184 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 184.

185. The allegations in Paragraph 185 are not directed to Santander and, accordingly, Santander is not required to respond. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 185.

186. Santander denies the allegations in Paragraph 186 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 186.

187. Santander denies the allegations in Paragraph 187 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 187.

COUNT VII
NYGBL § 349 (Deceptive Acts and Practices Unlawful)

188. Santander repeats and re-alleges its responses in the foregoing paragraphs.

189. Santander denies the allegations in Paragraph 189 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 189.

190. Santander denies the allegations in Paragraph 190 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 190.

191. Santander denies the allegations in Paragraph 191 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 191.

192. Santander denies the allegations in Paragraph 192 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 192.

193. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 193.

194. Santander denies the allegations in Paragraph 194 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 194.

195. Santander denies the allegations in Paragraph 195 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 195.

196. Santander denies the allegations in Paragraph 196 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 196.

197. Santander denies the allegations in Paragraph 197 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 197.

198. Santander denies the allegations in Paragraph 198 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 198.

199. Santander denies the allegations in Paragraph 199 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 199.

COUNT VIII
NYGBL § 349 (Deceptive Acts and Practices Unlawful)

200. Santander repeats and re-alleges its responses in the foregoing paragraphs.

201. Paragraph 201 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 201 to the extent such allegations are directed to Santander.

202. Paragraph 202 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 202 to the extent such allegations are directed to Santander.

203. Santander denies the allegations in Paragraph 203 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 203.

204. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 204.

205. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 205.

206. Santander denies the allegations in Paragraph 206 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 206.

207. Paragraph 207 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegation in Paragraph 207 to the extent such allegations are directed to Santander.

208. Santander denies the allegations in Paragraph 208 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 208.

209. Santander denies the allegations in Paragraph 209 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 209.

COUNT IX
NYGBL § 350 (Unlawful False Advertising)

210. Santander repeats and re-alleges its responses in the foregoing paragraphs.

211. Paragraph 211 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 211 to the extent such allegations are directed to Santander.

212. Santander denies the allegations in Paragraph 212 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 212.

213. This Paragraph purports to quote a statute, which speaks for itself. Sander refers the Court to the text of NYGBL § 350.

214. The second sentence in Paragraph 214 contains a legal conclusion to which no response is required. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 214.

215. Santander denies the allegations in Paragraph 215 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 215.

216. Santander denies the allegations in Paragraph 216 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 216.

217. Santander denies the allegations in Paragraph 217 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 217.

218. Santander denies the allegations in Paragraph 218 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 218.

219. Santander denies the allegations in Paragraph 219 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 219.

**COUNT X
RESCISSION/MISTAKE**

220. Santander repeats and re-alleges its responses in the foregoing paragraphs.

221. Santander denies the allegations in Paragraph 221 to the extent such allegations are directed to Santander. Santander lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 221.

222. Santander denies the allegations in Paragraph 222 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 222.

223. Santander denies the allegations in Paragraph 223 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 223.

224. Paragraph 224 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 224.

225. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 225.

226. Paragraph 226 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 226.

227. Paragraph 227 contains a legal conclusion to which no response is required. To the extent that a response is required, Santander denies the allegations in Paragraph 227.

**COUNT XI
BREACH OF CONTRACT**

228. Santander repeats and re-alleges its responses in the foregoing paragraphs.

229. Santander denies the allegations in Paragraph 229 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 229.

230. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 230.

231. Santander denies the allegations in Paragraph 231 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 231.

232. Santander denies the allegations in Paragraph 232 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 232.

233. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 233.

234. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 234.

235. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 235.

236. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 236.

237. Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 237.

238. Santander denies the allegations in Paragraph 238 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 238.

239. Santander denies the allegations in Paragraph 239 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 239.

240. Santander denies the allegations in Paragraph 240 to the extent such allegations are directed to Santander. Otherwise, Santander lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 240.

COUNT XII
NEGLIGENT HIRING, RETENTION, TRAINING, AND SUPERVISION

241. Santander repeats and re-alleges its responses in the foregoing paragraphs.

242. The allegations in Paragraph 242 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 242.

243. The allegations in Paragraph 243 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 243.

244. The allegations in Paragraph 244 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 244.

245. The allegations in Paragraph 245 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 245.

246. The allegations in Paragraph 246 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 246.

247. The allegations in Paragraph 247 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 247.

248. The allegations in Paragraph 248 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 248.

249. The allegations in Paragraph 249 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 249.

250. The allegations in Paragraph 250 are not directed to Santander and, accordingly, Santander is not required to respond. To the extent that a response is required, Santander denies the allegations in Paragraph 250.

DEFENSES

FIRST DEFENSE (as to all Counts)

The Complaint and the claims Plaintiffs assert all fail to state a claim against Santander upon which relief of any kind can be granted under any legal theory.

SECOND DEFENSE (as all Counts)

The Complaint and Plaintiffs' claims are barred by the equitable doctrines of waiver and estoppel.

THIRD DEFENSE (as to all Counts)

Plaintiffs failed to take reasonable care or effort to avoid the damages they allegedly sustained, thus, they are not entitled to recover any damages.

FOURTH DEFENSE (as to all Counts)

Plaintiffs failed to take reasonable care or effort to mitigate the damages they allegedly sustained, thus, they are not entitled to recover any damages.

FIFTH DEFENSE (as to Counts I, III, IV, V, VII, VIII and IX)

Santander states that the alleged statutory violations were totally unforeseeable. Therefore, Santander had neither a duty nor an opportunity to take steps to prevent the alleged harm.

SIXTH DEFENSE (as to all Counts)

The Complaint and Plaintiffs' claims are barred by the "voluntary payment doctrine," which provides that money voluntarily paid under a claim of right to the payment, and with full knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal, or that there was no liability to pay in the first instance.

SEVENTH DEFENSE (as to all Counts)

The losses, if any, sustained by Plaintiffs were the result of conduct of persons or entities over whom Santander had no control or responsibility, and for whose conduct Santander is thus not liable.

EIGHTH DEFENSE (as to all Counts)

Santander gives notice that it intends to rely upon any other defenses that may become available in the litigation and reserves its right to amend the answer to assert further defenses.

WHEREFORE, Santander prays: (1) that judgment enter in its favor as to all Counts of Plaintiffs' Complaint; (2) that the Court award Santander reasonable attorney's fees, and (3) that the Court grant such other relief as it deems appropriate.

CROSS-CLAIMS

Santander alleges the following Cross-Claims against defendant Planet Motor Cars, Inc.:

1. Defendant/cross-claimant Santander Consumer USA Inc. (“Santander”) is an Illinois corporation with a primary place of business at Thanksgiving Tower, 1601 Elm Street, Suite 800, Dallas, Texas 75201.
2. On information and belief, plaintiff Boris Freire (“Freire”) resides in Hudson County, New Jersey.
3. On information and belief, plaintiff Miriam Osorio resides in Hudson County, New Jersey.
4. On information and belief, cross-claim defendant Planet Motor Cars, Inc. (“Planet Motor Cars”) is a New York corporation and has a place of business in Jamaica, New York.
5. On or about February 19, 2013, Freire purchased a 2010 Honda Odyssey (the “Vehicle”) from Planet Motor Cars, which he paid for in part through financing pursuant to the terms of a Retail Instalment Contract (the “Contract”).
6. Planet Motor Car’s rights in the Contract were thereafter assigned to Santander.

Count I – Indemnification Against Planet Motor Cars

7. Santander incorporates by reference the preceding paragraphs of its Cross-Claims as if fully set forth herein.
8. Freire and Osorio have alleged that Planet Motor Cars (and its affiliates) engaged in a series of wrongful and illegal acts with respect to the Vehicle and the Contract, which misconduct is outlined in plaintiffs’ Complaint in the above-captioned action.
9. Freire and Osorio have also alleged that Santander is liable for damages that were caused by Planet Motor Cars and its affiliates.

10. Pursuant to a Non-Recourse Dealer Retail Agreement dated September 15, 2010, by and between Santander and Planet Motor Cars, Inc. (the “Agreement”), Planet Motor Cars agreed, *inter alia*, to indemnify Santander and hold it “harmless from any claims, losses, damages, liabilities and expenses, including attorneys’ fees and costs of litigation which relate to [the] Contract purchased by [Santander] and arise from [Planet Motor Car’s] breach or default under this Agreement, [Planet Motor Car’s] conduct, the failure of the transaction to comply with [Planet Motor Car’s] representations and warranties in Section 8, or result from any act or omission on the part of [Planet Motor Cars].”

11. If Santander is held liable to plaintiffs in this action, then Santander will be entitled to full indemnification by Planet Motor Cars.

Count II – Contribution Against Planet Motor Cars

12. Santander incorporates by reference the preceding paragraphs of its Cross-Claims as if fully set forth herein.

13. Plaintiffs have alleged that Santander is liable for damages that were caused by Planet Motor Cars.

14. If Santander is held liable to plaintiffs in this action, then Santander will be entitled to contribution from Planet Motor Cars.

WHEREFORE, Defendant/Counterclaimant Santander respectfully requests that the Court issue judgment in its favor and order:

- (a) that to the extent Santander is determined to owe any damages to plaintiffs, then Santander is entitled to recover indemnification and/or contribution from Planet Motor Cars in the full amount Santander is ordered to pay to plaintiffs; and

- (b) that Santander is entitled to its costs of suit, expenses, attorneys' fees; and, such other relief as this Court deems just and reasonable.

DEMAND FOR JURY TRIAL

Santander hereby demands a jury trial on all issues triable by a jury.

SANTANDER CONSUMER USA, INC.,
By its attorneys:

/s/ Robert J. Brener
Robert J. Brener (RB 3764)
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Date: March 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on March 19, 2014.

/s/ Robert J. Brener